

HAWAII RULES OF PENAL PROCEDURE

Table of Rules

I. SCOPE, PURPOSE AND CONSTRUCTION

1. Scope.
2. Purpose and Construction.
- 2.1. Classification of Proceedings.
- 2.2. Form of Pleadings and Motions.
 - (a) General.
 - (b) General Requirements.
 - (c) No Flyleaf Shall be Attached.
 - (d) Form of First Page of a Paper.
 - (e) Contents of First Paragraph.
 - (f) Two or More Papers or Documents Filed Together.
 - (g) Signing of Pleadings and Other Papers.
 - (h) Forms Furnished by the Court.

II. PROCEEDINGS IN THE DISTRICT COURT

3. Application for Arrest Warrant.
4. Reserved.
5. Proceedings Before the District Court.

III. THE CHARGE

6. Grand Jury.
7. The Indictment, Complaint and Oral Charge.
8. Joinder of Offenses and Defendants.
9. Obtaining the Appearance of Defendant.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

10. Arraignment in Circuit Court.
- 10.1. Initial Appearance Before the Court.
- 10.2. Repealed.
11. Pleas.

12. Pleadings and Motions Before Trial; Defenses and Objections.
13. Consolidation.
14. Relief from Prejudicial Joinder.
15. Depositions.
16. Discovery.
 - (b)(1)(v)
 - (e)(3)(i)-(v)
- 16.1 Discovery Procedures for Non-Felony Criminal and Traffic Cases.
 - (a) Applicability.
 - (b) Request for Discovery.
 - (c) Motion to Compel Discovery.
17. Subpoena.
- 17.1 Pretrial Conference.

V. VENUE

18. Venue.
19. Reserved.
20. Reserved.
21. Transfer from District or Circuit for Trial.
22. Time of Motion to Transfer.

VI. TRIAL

23. Trial by Jury or by the Court.
24. Trial Jurors.
 - (d) Sequence for Challenging of Jurors.
- 24.1 Conduct of a Trial.
 - (a) Sequence of Presentation.
 - (b) Address to Jury is Not Instruction Upon the Law.
 - (c) Presence of Counsel at Verdict.
 - (d) Limitations on Number of Counsel.
25. Judge; Disability.
26. Evidence.
27. Proof of Official Record.
28. Expert Witnesses and Interpreters.
29. Motion for Judgment of Acquittal.
30. Instructions to the Jury.
 - (f) Copy of Instructions for Jurors.
31. Verdict.

VII. JUDGMENT

- 32. Sentence and Judgment.
- 33. New Trial.
- 34. Arrest of Judgment.
- 35. Correction or Reduction of Sentence.
- 36. Clerical Mistakes.

VIII. ORDERS

- 37.
- 38. Stipulations and Orders.
 - (a) Forms and Stipulations and Orders.
 - (b) Stipulations Extending Time.
- 39. Titles to Orders.

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

- 40. Post-conviction Proceeding.
 - [(j) Procedures for Processing Post-conviction Prisoner Documents in the Circuit Court.]
- 41. Search and Seizure.

X. GENERAL PROVISIONS

- 42. Filing Procedure by the Clerk.
 - (a) Classification.
 - (b) Stamp by Clerk.
 - (c) Docket Entry and Filing.
 - (d) Original Kept on File.
 - (e) No Rejection of Papers for Filing.
 - (f) Receipt of Proposed Orders.
- 42.1. Ex Officio Filing.
- 42.2. Withdrawal of Papers.
- 42.3. Procedures for Processing Post-conviction Papers.
 - (a) Processing Post-conviction Papers.
 - (b) Disposition.
- 43. Presence of Defendant.
- 44. Settlement of Findings of Fact, Conclusions of Law and Order.

- (a) Preparation of Findings of Fact, Conclusions of Law and Order.
 - (b) Securing Approval from Opposing Party.
 - (c) Objection as to Form.
 - (d) Settlement.
 - (e) No Affect on Right to Appeal.
- 45. Time.
- 46. Bail.
- 47. Motions, Affidavit or Declaration and Responses.
 - (a) Form.
 - (b) Requirement of Notice of No Opposition.
 - (c) Filings in Opposition.
 - (d) Declaration in Lieu of Affidavit.
- 48. Dismissal.
- 49. Service of Papers on Parties, and Proof Thereof; Notice of Entry of Orders and Judgments; Filing of Papers.
 - (b)(1) Service of complaint, indictment, bench warrant, summons, or sub-poena.
 - (b)(2) Service of other papers.
 - (b)(3) Delivery and facsimile transmission: how made.
 - (b)(4) Service: when completed.
 - (c) Proof of Service.
 - [(c)] (d) Notice of Orders and Judgments.
 - [(d)] (e) Filing.
- 50. Calendars.
- 50.1 Preparation of Clerk's Minutes and Exhibit Lists; Withdrawal of Exhibits.
 - (a) Minutes.
 - (b) Exhibits.
- 51. Exceptions Unnecessary.
- 52. Harmless Error and Plain Error.
- 53. Regulation of Conduct in the Courtroom.
 - (a) Required Notice.
 - (b) Effect of Failure to Appear.
- 54. Application and Exceptions.
- 55. Recording of Testimony and Proceedings.
- 56. Courts and Clerks.
- 57. Withdrawal of Counsel.
- 58. Reserved.
- 59. Effective Date.
- 60. Title.

HAWAI'I RULES OF PENAL PROCEDURE

Approved: 10/18/96

RULE 2.1. CLASSIFICATION OF PROCEEDINGS

All criminal proceedings shall be divided into the following classes: TRAFFIC, CRIMINAL TRAFFIC, CRIMINAL, FAMILY CRIMINAL, SPECIAL PROCEEDING, AND SPECIAL PROCEEDING - PRISONER.

Proceedings in mandamus, habeas corpus, quo warranto, prohibition, and any other proceedings not specifically included herein shall be classified under SPECIAL PROCEEDING.

This rule is adopted from the following rules:
RCC Rule 1; RDC Rule 1.

Approved: 8/22/97 (sub (a)-(g))

Re-approved: 11/7/97

Approved: 4/3/98 (sub (h))

RULE 2.2. FORM OF PLEADINGS AND MOTIONS

General. All pleadings and papers to be filed shall be in substantially the form annexed to these rules and described in particular in this rule.

General Requirements.

Quality and Size of Paper, and Style of Type.

Papers to be filed shall be typed or printed in black and shall be neat, clean, and legible.

The paper shall be unruled, opaque, unglazed and white of standard quality, 8 1/2 x 11 inches in size, and not less than thirteen pound weight.

The type shall be standard 12 point pica or equivalent.

Margins.

Each page shall have a margin at the top and bottom of 1 inch.

The left-hand and right-hand side margin shall be not less than 1 inch.

Spacing. Lines on each page shall be double-spaced or one and one-half spaced; provided that descriptions of real property and quotations may be single spaced.

Two-Sided Copies. Copies, but not originals, may be two-sided.

Pagination. All pages to a paper, except the first page, shall be numbered consecutively at the bottom and shall be firmly bound together at the top.

Signature. Signatures and all other handwritten entries on papers shall be in legible black or blue ink.

Exhibits. Exhibits may be fastened to pages of the specified size. Copies of exhibits shall be as legible as the original.

No Flyleaf Shall be Attached. No flyleaf shall be attached to any paper.

Form of First Page of a Paper. Except as provided in paragraph (f), the first page of each paper shall be in the following form:

The space at the top left of the center of the page shall contain the name, attorney number, office address, telephone number, and facsimile number (if any) of the attorney for the party in whose behalf the paper is filed, or of the party if appearing pro se;

The space at the top right of the center of the page shall be left blank for the use of the clerk of the court;

The caption shall conform to the following:

The name of the court shall be centered and not less than 3 inches from the top of the page;

The space to the left of the center of the page shall contain the case name;

In the space to the right of the case name, there shall be listed: the case number, the title of paper(s) attached (if any), and the hearing date, time, and name of the presiding judge.

In the center of the page below the caption, there shall be a title stating the character of the paper.

Notice that certification or acknowledgment of service is attached may be entered at the bottom margin.

Contents of First Paragraph. When the purpose of the motion is to request the court to issue an order, the first paragraph of the motion shall contain a concise statement of the relief sought. When applicable, the first paragraph shall include a reference to any prior order, judgment or decision implicated by the relief sought.

Two or More Papers or Documents Filed Together. When two or more papers or documents are filed together (such as a motion and its supporting documents), the documents following the first document need not begin on a new page and need not comply with the first page requirements of paragraph (d), except that the title of the ensuing document(s) must be centered on the page before the first paragraph of that document.

Signing of Pleadings and Other Papers. Every pleading and other paper shall be signed by the party or the party's counsel. Where two or more papers or documents are filed together, the party or party's counsel need only provide one signature at the close of the papers filed together, with the exception that where affidavits or declarations of counsel are filed together with pleadings or other papers, the affidavits or declarations must be separately executed.

Forms Furnished by the Court. The court shall furnish forms approved by the supreme court, and those forms shall be used in all appropriate instances, unless otherwise permitted by the court.

Approved forms may be reproduced through photocopiers, computers, or other means. A reproduced form shall be similar in design and content to the approved form. Any person filing a form that is not identical in content to an approved form shall advise the court of the differences by attaching a short explanatory addendum to

the document. The court may impose sanctions upon the filing person for failure to comply with this rule. The approved forms or any reproduction thereof permitted by this rule shall not be subject to the format requirements of this rule.

This rule is adopted from the following rules:
RCC Rule 3; RDC Rule 3.

Approved: 7/31/98 (sub (c)(3))

**Approved: 12/11/98 (sub (a)(2), (b)(2)
and (c)(8))**

RULE 5. PROCEEDINGS BEFORE THE DISTRICT COURT

(a) In General.

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(2) *Probable Cause Determination Upon Arrest Without a Warrant.* As soon as practicable, and, Rule 45 notwithstanding, not later than 48 hours after the warrantless arrest of a person held in custody, a district judge shall determine whether there was probable cause for the arrest. No judicial determination of probable cause shall be made unless there is before the judge, at the minimum, an affidavit of the arresting officer or other person making the arrest, setting forth the specific facts to find probable cause to believe that an offense has been committed and that the arrested person has committed it. If probable cause is found as aforesaid, an appropriate order shall be filed with the court as soon as practicable. If probable cause is not found, or a proceeding to determine probable cause is not held within the time period provided by this subsection, the arrested person shall be ordered released and discharged from custody.

* * *

(b) Offenses Other Than Felony

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(2) *Plea.* The plea shall be entered in accordance with the provisions of Rule 11. The defendant shall not be entitled to a preliminary hearing; provided that if a defendant, having been arrested without a warrant, is held in custody for a period of

more than 48 hours, Rule 45 notwithstanding, after the defendant's initial appearance in court without a commencement of trial, the defendant shall be released to appear on the defendant's own recognizance unless the court finds from a sworn complaint or from an affidavit or affidavits filed with the complaint or pursuant to subsection (a)(2) of this rule that there is probable cause to believe that an offense has been committed and that the defendant has committed it; provided further that if the defendant demands a jury trial under subsection (b)(3) of this rule, the court shall, upon the defendant's motion, discharge the defendant unless probable cause is found as aforesaid.

(c) Felonies.

* * *

(3) *Time for Preliminary Hearing; Release Upon Failure of Timely Disposition.* The court shall conduct the preliminary hearing within 30 days of initial appearance if the defendant is not in custody; however, if the defendant is held in custody for a period of more than 2 days [48 hours] after initial appearance without commencement of a preliminary hearing, the court, on motion of the defendant, shall release the defendant to appear on the defendant's own recognizance, unless failure of such determination or commencement is caused by the request, action or condition of the defendant, or occurred with the defendant's consent, or is attributable to some compelling fact or circumstance which would preclude such determination or commencement within the prescribed period, or unless such compelling fact or circumstance would render such release to be against the interest of justice.

* * *

(8) *Bail.* The district court, as authorized by Hawai'i Revised Statutes, chapter 804, may admit the defendant to bail or modify bail any time prior to the filing of the written order committing the case to circuit court.

Approved: 1/17/97 (sub (b)(1)(i) only)
Approved: 11/7/97 (other subsections)
Amended: 10/16/98 (sub (b)(1)(v))

RULE 16. DISCOVERY

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(b) Disclosure by the Prosecution.

(1) *Disclosure of Matters Within Prosecution's Possession.* The prosecutor shall disclose to the defendant or the defendant's attorney the following material and information within the prosecutor's possession or control:

(i) the names and last known addresses of persons whom the prosecutor intends to call as witnesses in the presentation of the evidence in chief, together with any [their] relevant written or recorded statements, provided that statements recorded by the prosecutor shall not be subject to disclosure;

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(v) [any prior criminal record of the defendant] a copy of any Hawai'i criminal record of the defendant and, if so ordered by the court, a copy of any criminal record of the defendant outside the State of Hawai'i;

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(e) Regulation of Discovery.

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(3) *Custody of Materials.* [Any] Except as otherwise provided in this subsection, any discovery material furnished to an attorney pursuant to these rules shall remain in the attorney's exclusive custody and be used only for the purposes of conducting the attorney's side of the case, and shall be subject to such other terms and conditions as the court may provide.

A copy of the discovery materials may be provided by defense counsel to the defendant, to be used only for the purposes of conducting defendant's case, after being screened in accordance to the following procedure:

(i) Defense counsel shall give written notice to the prosecutor that the defendant has requested a copy of the discovery materials furnished;

(ii) The prosecutor shall, within ten days from the receipt of the notice, respond in writing notifying defense counsel of any portion of the discovery material which the prosecution requests not be copied and provided to the defendant;

(iii) Defense counsel shall delete, obliterate, or excise the material requested to be excluded from the copy of the discovery materials to be provided to the defendant; and

(iv) If there is a dispute as to the material to be excluded, any party may request the court for an appropriate order, and no copy of any disputed discovery material shall be provided to defendant until the dispute is resolved or the court enters the appropriate order.

Approved: 7/31/98

Amended: 12/11/98 (sub (b))

Amended: 3/19/99 (sub (a))

RULE 16.1. DISCOVERY PROCEDURES FOR NON-FELONY CRIMINAL AND CRIMINAL TRAFFIC CASES

(a) Applicability. This rule shall apply to non-felony criminal and criminal traffic cases.

(b) Request for Discovery. If discovery is sought of materials that would be discoverable in felony cases pursuant to these rules, a request for discovery shall be made to the opposing side in writing and shall list the specific materials being sought. Unless otherwise ordered, the request shall not be filed with the court.

(c) Motion to Compel Discovery. A party may file a motion to compel discovery if a timely request for discovery was made, unless otherwise ordered by the court.

This rule is adopted from the following rule:
RDC Rule 33(a).

Approved: 10/16/98

RULE 17. SUBPOENA

* * *

(c) **Service.** A subpoena may be served by a police officer or by any other person who is not a defendant and who is not less than 18 years of age. Service of subpoena shall be made by delivering a copy thereof to the person named or by sending it by certified or registered mail, return receipt requested and with restricted delivery to the person named only, and by tendering [him] to the person named the fee of 1 day's attendance and the mileage allowed by law, provided that no such tender need be made when the subpoena is issued on behalf of the prosecution or a defendant who is unable to pay for the same.

Approved: 11/7/97

RULE 24. TRIAL JURORS

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(d) **Sequence for Challenging of Jurors.** Challenges for cause may be made at any time prior to the exercise of peremptory challenges. The prosecutor and the defendant, shall alternately state their peremptory challenges, if any, the prosecutor beginning, and the defendant ending. In case there are more than two defendants in any case, the order of precedence of their challenges, if not agreed upon by them, shall be determined by the court.

Amendments adopted from the following rule:
RCC Rule 17.

Approved: 11/7/97

Amended: 12/11/98 (sub (a))

RULE 24.1. CONDUCT OF A TRIAL

(a) **Sequence of Presentation.** Subject to the orders of the court, which may alter the sequence of presentation of the case when there are numerous parties or for

other reasons:

(1) The prosecutor in a criminal case shall have the right to make an opening statement. The defendant shall also have the right to make an opening statement, either immediately after the prosecutor's statement or at the beginning of defendant's case.

(2) After the opening statement or statements, the prosecutor shall produce the evidence in chief.

(3) The defendant may then open the defense and offer evidence in support thereof.

(4) The parties may then respectively offer rebutting evidence only.

(5) When the presentation of evidence is concluded, unless the case is submitted on either side or both sides without argument, the prosecutor shall open the argument; the defendant may then reply; and the prosecutor may conclude the argument, and in conclusion shall confine himself or herself to answering any new matter or arguments presented by the defendant. In the event the defendant has presented an affirmative defense, the court may allow surrebuttal argument but shall confine counsel to answering or otherwise responding to the arguments presented by the prosecutor on the issue of the affirmative defense.

(b) Address to Jury Is Not Instruction Upon the Law. In addressing the jury, each party shall be allowed to fully and fairly state the party's theory of the case and the reasons which entitle the party to a verdict.

(c) Presence of Counsel at Verdict. Unless excused by the court, counsel for all parties shall be present upon receiving the verdict of a jury.

(d) Limitations on Number of Counsel. Except by leave of court, only one counsel for each party shall examine and cross-examine the same witness or be heard on any question.

This rule is adopted from the following rules:
RCC Rule 17; RDC Rule 17.

Approved: 11/7/97
Amended: 12/11/98 (sub (f))

RULE 30. INSTRUCTIONS TO THE JURY

(a) Requests. [At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests.] At such reasonable time as the court directs, the parties shall file written requests that the court instruct the jury on the law. Each instruction requested shall designate by whom it is being requested and the number of the request, e.g., STATE’S INSTRUCTION NO. 3. Each requested instruction shall be written on a separate page or group of pages. The original and one copy of each requested instruction shall be filed with the court and a copy served upon opposing counsel. It will be sufficient to request by number pattern instructions known as the Hawai‘i Standard Jury Instructions Criminal (HAWJIC). [Nothing herein contained shall be construed as an approval by the Supreme Court of the State of Hawai‘i of the substance of any of said instructions.]

* * *

(f) Copy of Instructions for Jurors. The court shall provide a copy of the instructions for each juror, without citations, or other identification to be designated as the court’s instructions.

Amendments adopted from the following rule:
RCC Rule 20.

Approved: 11/7/97
Amended: 12/11/98 (sub (b))

RULE 38. STIPULATIONS AND ORDERS

(a) Forms of Stipulations and Orders. Unless made in open court, all stipulations shall be in writing, signed by the parties or their attorneys, and filed with the clerk. An order based upon a stipulation shall be sufficient if the words “Approved and so ordered” or their equivalent are endorsed on the stipulation at the close thereof and signed by the judge.

(b) Stipulations Extending Time. Stipulations extending time to act under Rule 45(b)(1) of these rules shall indicate the existing expiration date.

This rule is adopted from the following rules:
RCC Rule 19; RDC Rule 19.

Approved: 11/7/97

RULE 39. TITLES TO ORDERS

The subject of every order shall be indicated in its title.

Amendments adopted from the following rules:
RCC Rule 9; RDC Rule 9.

Approved: 1/23/98
(subsection (j) deleted)

RULE 40. POST-CONVICTION PROCEEDING

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[(j) Procedures for Processing Post-conviction Prisoner Documents in the Circuit Court. In the circuit court, post-conviction documents submitted by prisoners shall be processed as applicable pursuant to Rule 33 of the Rules of the Circuit Courts.]

Approved: 11/7/97
Amended: 12/11/98 (sub (e))
Approved: 12/11/98 (sub (f))

RULE 42. FILING PROCEDURE BY THE CLERK

(a) Classification. Upon the filing of the complaint, indictment, petition, pleading, or other similar papers, the clerk of the court shall classify and assign a number to the proceeding. All subsequent papers to be filed in the proceeding shall bear the same number, which shall appear on the first page of the paper.

(b) Stamp by Clerk. The clerk shall promptly stamp the time and date upon all papers filed.

(c) Docket Entry and Filing.

(1) In the Circuit Court. Upon the filing of any papers, an appropriate entry shall be made in the docket kept for each case. The docket may be an electronic record within a court-maintained computer. Each case shall be filed separately and its file shall contain an index sheet identifying particularly each paper in such file and stating the date of filing.

(2) In the District Court. Upon the filing of any papers, an appropriate entry shall be made in the court calendar kept for each case. Each case shall be filed separately and the court calendar shall contain a case history identifying particularly each paper filed in the case and stating the date of filing.

(d) Original Kept on File. The original shall be kept on file by the clerk.

(e) No Rejection of Papers for Filing. Notwithstanding any other rule to the contrary, the clerk shall not refuse to file any paper presented for that purpose solely because it is not presented in proper form as required by these rules.

(f) Receipt of Proposed Orders. Proposed findings, conclusions or orders submitted for signature shall be dated and stamped “lodged” or “received” by the clerk and shall be transmitted to the court for consideration.

This rule is adopted from the following rule(s):
RCC Rule 2; RDC Rule 2.

Approved: 11/7/97

RULE 42.1. EX OFFICIO FILING

The respective clerks of the circuit courts shall be ex officio clerks of all the courts of record for the purpose of filing and forwarding to the appropriate court notices of appeal, appellate briefs and statements of jurisdiction.

This rule is adopted from the following rule:
RCC Rule 2.1.

Approved: 11/7/97

RULE 42.2. WITHDRAWAL OF PAPERS

The clerk shall not permit any papers to be taken from the clerk's custody except as ordered by the court.

This rule is adopted from the following rules:
RCC Rule 6; RDC Rule 6.

Approved: 1/23/98

RULE 42.3. PROCEDURES FOR PROCESSING POST-CONVICTION PAPERS

(a) Processing Post-conviction Papers. All post-conviction papers received by any court shall be transmitted to a judge for processing. All such papers shall be received as public and shall not be considered or treated as "confidential," "private," "personal," etc. A judge shall determine whether each paper shall be handled as a civil matter, filed and docketed under the applicable criminal case number, or filed and docketed under a new or existing SPP (Special Proceeding - Prisoner) number. A separate file shall be established for each SPP number.

(b) Disposition. All papers filed and docketed under a new or existing SPP (Special Proceeding - Prisoner) number shall be governed by Rule 40 of these rules.

This rule is adopted from the following rule:
RCC Rule 33.

RULE 44. SETTLEMENT OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

(a) Preparation of Findings of Fact, Conclusions of Law and Order.

(1) In the circuit court. Unless otherwise ordered by the court, within 10 days after decision or ruling of the court following a jury-waived trial or a hearing on a motion, the prevailing party shall prepare and deliver to the parties the findings of fact, conclusions of law and order, in accordance with the decision or ruling.

(2) In the district court. After the decision or ruling of the court, the clerk shall enter on the calendar the order, in accordance with the decision or ruling. Unless otherwise ordered by the court, the entry shall constitute the order.

(b) Securing Approval from Opposing Party. The party preparing the findings, conclusions and order shall attempt to secure approval as to form from the opposing party. Upon approval, which shall be made not later than 5 days after delivery, the document shall be returned to the originating party who shall promptly deliver it to the court. If the document is not approved as to form within 5 days after delivery, the originating party shall promptly deliver the proposed findings, conclusions and order to the court along with certificate of service on all parties.

(c) Objection as to Form. If any party objects to the form of the document prepared, that party, within 5 days of delivery, or other such time as authorized by the court, shall serve upon the party who prepared the document and deliver to the court a statement of that party's objections and the reasons therefore or proposed findings, conclusions and order. Failure to file and serve objections or proposed findings, conclusions or order shall constitute approval as to form of the document prepared.

(d) Settlement. The court shall timely settle the objections, if any, and issue the findings of fact, conclusions of law, and order as it deems proper.

(e) No Affect on Right to Appeal. Approval as to form shall not affect the right of any party to appeal from the decision or ruling of the court and shall not be deemed as a waiver of disputed findings or conclusions.

This rule is adopted from the following rules:
RCC Rules 21, 23; RDC Rules 21, 23.

Approved: 1/23/98

RULE 45. TIME

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(c) **For Motions; Affidavits or Declarations.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 48 hours before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit or declaration, the affidavit or declaration shall be served with the motion; and opposing affidavits or declarations may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

Approved: 1/23/98

Amended: 12/11/98 (sub (a)-(d))

RULE 47. MOTIONS, AFFIDAVIT OR DECLARATION AND RESPONSES

(a) **Form.** An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. A motion involving a question of law shall be accompanied by a memorandum in support of the motion. If a motion requires the consideration of facts not appearing of record, [I]it [may] shall be supported by affidavit or declaration. Written motions, other than ex parte motions, shall be noticed as provided by Rule 2.2(d)(3)(iii) of these rules.

(b) **Required Notice of No Opposition.** A party who does not oppose or who intends to support a motion shall promptly give written notification to the court and opposing counsel.

(c) **Filings in Opposition.** An opposing party may serve and file counter affidavits, declarations or memoranda in opposition to the motion, which shall be served and filed in accordance to Rules 45 and 49 of these rules, except as otherwise ordered by the court.

(d) Declaration in Lieu of Affidavit. In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

“I, _____, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated:

(Signature)

Amendments adopted from the following rules:
RCC Rule 7; RDC Rule 7.

Approved: 7/31/98 (sub (d)(1))

Re-approved: 9/18/98 (sub

(d)(1))

Approved: 9/18/98 (sub (b))

Approved: 10/16/98 (sub (b)(1))

RULE 48. DISMISSAL

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(b) By Court. Except in the case of traffic offenses that are not punishable by imprisonment, the court shall, on motion of the defendant, dismiss the charge, with or without prejudice in its discretion, if trial is not commenced within six months from:

(1) the date of arrest when bail is set or of filing of the charge, whichever is sooner, on any offense based on the same conduct or arising from the same criminal episode for which the arrest or charge was made; or

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(d) Per Se Excludable and Includable Periods of Time for Purposes of Subsection (c)(1) of This Rule.

(1) For purposes of subsection (c)(1) of this rule, the period of time, from the filing through the prompt disposition of the following motions filed by a defendant,

shall be deemed to be periods of delay resulting from collateral or other proceedings concerning the defendant: motions to dismiss, to suppress, for voluntariness hearing heard before trial, to sever counts or defendants, for disqualification of the prosecutor, for withdrawal of counsel including the time period for appointment of new counsel if so ordered, for mental examination, to continue trial, for transfer to the circuit court, for remand from the circuit court, for change of venue, to secure the attendance of a witness by a material witness order, and to secure the attendance of a witness from without the state.

Approved: 1/23/98

Amended: 12/11/98 (sub (b))

Amended: 1/22/99 (sub (b)-(f))

Amended: 3/19/99 (sub (d))

**RULE 49. SERVICE OF PAPERS ON PARTIES AND PROOF THEREOF;
NOTICE OF ENTRY OF ORDERS AND JUDGMENTS; FILING OF
PAPERS**

[(a) Service: When Required. Written motions other than those which are heard ex parte written notices, designations of record on appeal and similar papers shall be served upon each of the parties.]

(a) Service: When Required. All written submissions to the court, including ex parte motions, shall be served upon each of the parties promptly after filing, unless otherwise ordered by the court.

(b) Service: How Made. Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party [himself] is ordered by the court. [Service upon the attorney or upon the party shall be made in the manner provided in civil actions.]

(1) Service of complaint, indictment, bench warrant, summons, or subpoena. Service of the complaint, indictment, bench warrant, or summons shall be governed by Rule 9 of these rules. Service of a subpoena shall be governed by Rule 17 of these rules.

(2) Service of other papers. Service of papers other than complaint, indictment, bench warrant, summons or subpoena shall be made (a) by delivering a copy to the attorney or party; (b) by mailing it to the attorney or party at the attorney's or party's last known address; (c) if no address is known, by leaving it with the clerk of the court;

or (d) if service is to be upon the attorney, by facsimile transmission to the attorney's business facsimile receiver.

(3) *Delivery and facsimile transmission: how made.* Delivery of a copy within this rule means: handing it to the attorney or to the party; leaving it at the attorney's or party's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Facsimile transmission means transmission and receipt of the entire document without error between the hours of 8:00 a.m. and 5:00 p.m. Hawai'i Standard Time on a court day with a cover sheet which states the attorney(s) to whom it is directed, the case name and court case number, and the title and number of pages of the document.

(4) *Service: when completed.* Service by mail is complete upon mailing. Service by facsimile transmission is complete upon receipt of the entire document by the receiving party's facsimile machine. Service by facsimile transmission that occurs after 5:00 p.m. shall be deemed to have occurred on the next court day.

(c) **Proof of Service.** Proof of service of complaint, indictment, bench warrant, and penal summons shall be governed by Rule 9 of these rules. Proof of service of papers other than the complaint, bench warrant or summons may be made by written acknowledgment of service, by affidavit or declaration of the person making service, or by any other proof satisfactory to the court, unless otherwise provided by law.

Proof of service by facsimile transmission shall be made by a certificate of service which declares that service was accomplished by facsimile transmission to a specific phone number, on a specific date and time, and which either (a) attaches the written confirmation from the sender's facsimile machine that confirms the document was received in its entirety and without error; or (b) certifies that the sender called the office being served and obtained verbal confirmation that the document was received.

(d) **Relief upon Failure to Receive Due Notice.** A party who has failed to receive due notice or to be served, or who has been prejudiced by reason that service was made by mail or facsimile transmission, may apply to the court for appropriate relief.

[(c)](e) **Notice of Entry of Orders and Judgments.** Immediately upon the entry of: [a judgment or an order made on a written motion subsequent to arraignment the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing.]

(1) an order prepared by a party, the party shall serve notice of such entry, unless otherwise ordered by the court;

(2) an order prepared by the court, the clerk shall deliver or serve notice of such entry, unless otherwise ordered by the court; or

(3) a judgment, the clerk shall deliver or mail to each party the judgment and shall make a note in the docket of the delivery or mailing.

Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(b) of the Hawai'i Rules of Appellate Procedure.

[(d)](f) Filing. [Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.] The filing of motions and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. When papers are presented for filing, the original shall be accompanied with a sufficient number of copies.

Amendments adopted from the following rules:

RCC Rule 5; HRCPP Rule 5; RDC Rule 5; HRCPP Rule 9.

Approved: 11/7/97

Re-approved: 1/23/98

Amended: 3/19/99 (sub (a))

RULE 50.1. PREPARATION OF CLERK'S MINUTES AND EXHIBIT LISTS; WITHDRAWAL OF EXHIBITS

(a) **Minutes.** The court shall cause minutes to be prepared for its own use and retained.

(b) **Exhibits.**

(1) *Circuit Court.* The court shall cause an exhibit list to be prepared which shall indicate exhibits marked and received. Upon notice and written order of the court,

an exhibit may be withdrawn.

(2) District Court. All exhibits received shall be filed and noted on the court calendar. Upon notice and approval of the court, an exhibit may be withdrawn.

This rule is adopted from the following rules:
RCC Rule 27; RDC Rule 27.

Approved: 1/23/98

Amended: 12/11/98 (sub (b))

Amended: 3/19/99 (sub (b))

RULE 53. [EXPEDITION OF COURT BUSINESS] REGULATION OF CONDUCT IN COURTROOM

(a) Required Notice. Attorneys shall advise the court promptly if a case is settled or a matter will not proceed as scheduled. An attorney who fails to give the court and opposing counsel such prompt advice may be subject to sanctions as the court deems appropriate.

(b) Effect of Failure to Appear or Prepare. An attorney who, without just cause, fails to appear when required or unjustifiably fails to prepare for a presentation to the court necessitating a continuance may be subject to sanctions as the court deems appropriate.

This rule is adopted from the following rules:
RCC Rule 15; RDC Rule 15.

Approved: 7/31/98

Amended: 3/19/99

Rule 55. RECORDING OF TESTIMONY AND PROCEEDINGS

It shall be the responsibility of the court to insure that a complete record is kept of all court proceedings in a form that is sufficiently clear to permit transcription of proceedings. A log shall be kept of all such records.

This rule is adopted from the following rules:
RCC Rule 25.1; RDC Rule 25.1.

Approved: 1/23/98
Amended: 1/22/99
Amended: 3/19/99

RULE 57. WITHDRAWAL OF COUNSEL

Withdrawal of counsel shall require the approval of the court and shall be subject to Rule 1.16 of the Hawai'i Rules of Professional Conduct. Where the defendant is or may be indigent, substitution of counsel shall comply with the procedure established in Hawai'i Revised Statutes, chapter 802. Unless otherwise ordered, withdrawal of counsel shall not become effective until substitute counsel appears or is appointed, the defendant appears pro se or the defendant is deemed to have waived counsel.

This rule is adopted from the following rules:
RCC Rule 10.1; RDC Rule 10.1.